

IN THE SUPREME COURT OF IOWA

NO. 17-1979

33 CARPENTERS CONSTRUCTION, INC.,

Plaintiff/ Counterclaim Defendant/Appellant/Cross-Appellee

vs.

THE CINCINNATI INSURANCE COMPANY,

Defendant/Counterclaim Plaintiff/Appellee/Cross-Appellant.

APPEAL FROM DISTRICT COURT OF MUSCATINE COUNTY
THE HONORABLE MARY E. HOWES (Cross-Appeal)
THE HONORABLE HENRY W. LANTHAM II (Appeal)
SCOTT COUNTY DISTRICT COURT CASE NO. LACE128760

APPELLEE/CROSS-APPELLANT'S FINAL REPLY BRIEF

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ISSUES PRESENTED FOR REVIEW ON CROSS APPEAL

- I. Whether the District Court erred in denying Cincinnati Insurance
Company’s Application to Terminate Expedited Civil Action Rule
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Jack v. P & A Farms, Ltd., 822 N.W.2d 511 (Iowa 2012)
Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp., 606 N.W.2d 359 (Iowa 2000)
Iowa Dep't of Transp. v. Soward, 650 N.W.2d 569 (Iowa 2002)
Dubuque Policemen's Protective Ass'n v. City of Dubuque, 553 N.W.2d 603 (Iowa 1996)

Other Authorities:

Iowa Rule of Civil Procedure 1.281(1)(a)
Iowa Rule of Civil Procedure 1.1101 et seq.
22A Am.Jur.2d *Declaratory Judgments* § 1

CROSS-APPEAL ARGUMENT

I. THE DISTRICT COURT'S DECISION NOT TO TERMINATE THE APPLICATION OF THE EXPEDITED CIVIL ACTION RULES RESTED ON AN ERRONEOUS INTERPRETATION OF IOWA RULE OF CIVIL PROCEDURE 1.281

Cross-Appellee, 33 Carpenters, argues because it won the race to the courthouse and filed its action for money damages before Cincinnati could file its action for declaratory judgment, it can dictate the application of the expedited civil action rules. This is contrary to the plain language of the expedited civil action rules and the reasoning behind those rules.

33 Carpenter's brief sets forth a misunderstanding of Iowa Rule of Civil Procedure 1.281. Iowa Rule of Civil Procedure 1.281(1)(a) sets forth the eligibility requirements for an expedited civil action: "Rule 1.281 governs "expedited civil actions" in which the relief sought is a monetary judgment **and** in which all claims (other than compulsory counterclaims) for all damages by or against any one party total \$75,000 or less, including damages of any kind, penalties, pre-filing interest, and attorney fees, but excluding prejudgment interest accrued after the filing date, postjudgment interest, and costs." This rule requires the sole relief sought must be a money judgment and the relief sought must be below a monetary threshold. Because Cincinnati filed a compulsory counterclaim seeking something other than

monetary relief, the case no longer remains eligible for expedited case processing. Iowa Rule of Civil Procedure 1.281(1)(g)(2).

In addition to the plain language of the rule, the background of the expedited civil track supports finding it is inapplicable in cases seeking declaratory relief. The expedited civil action rules had their genesis in recommendations issued by the Iowa Supreme Court Task Force on Civil Justice Reform, hereinafter the Task Force. *See Order, In re Appointments to the Task Force for Civil Justice Reform* at 1. In January 2012, the Task Force issued *Reforming the Iowa Civil Justice System*, hereinafter the Task Force Report.¹

In suggesting the two-tiered system, the Task Force analyzed other jurisdictions that use such a system. The Task Force explained “[u]nder such a tiered structure, civil cases falling below a certain threshold dollar value, or cases of a particular legal category, would receive Tier 1 or Tier 2 classification.” Task Force Report at 13. The Task Force explained common denominators of Tier 1 cases included “cases valued below a certain threshold amount; streamlined or limited discovery processes; limited motion practice; simplified rules of evidence; accelerated pre-trial deadlines and earlier trial dates; possible mandatory ADR; and cases presenting claims of personal injury, debt collection, breach of contract, breach of warranty, or property damages.” Task Force Report at 14. The Task

¹ Available online at http://publications.iowa.gov/12732/1/FINAL_03_22_12.pdf

Force explain the common denominators of Tier 2 cases included “high-dollar value cases; cases that are not easily quantified monetarily . . . will contests, punitive damage claims, employment, environmental, constitutional, copyright or trademark infringement, **and declaratory judgment actions**; cases involving **equitable remedies**, even though the amount in controversy may be less than the threshold limits; and complex litigation matters.” *Id.* (emphasis added).

After the issuance of the Task Force Report, the Iowa Supreme Court appointed an Advisory Committee Concerning Certain Civil Justice Reform Task Force Recommendations to propose amendments to the Iowa Rules of Civil Procedure to implement a two-tier civil justice system. *See* Laurie Kratky Doré, If you Build it, Will They Come? Designing Iowa’s New Expedited Civil Action Rule and Related Civil Justice Reforms, 63 Drake L. Rev. 401, 417-18 (2015). Professor Doré was a member of that Advisory Committee and the author of the only law review article on Iowa’s expedited civil action track. In discussing one of the two grounds for termination of the expedited civil action, Professor Doré explains “the court must remove a case from the ECA procedure if a defendant files a counterclaim that arises from the same transaction or occurrence as the plaintiff’s claim that either **seeks nonmonetary relief** or a monetary judgment for more than \$75,000.” *Id.* at 431 (citing Iowa R. Civ. P. 1.241 (defining compulsory

(last accessed April 4, 2018).

counterclaim)). As referenced in Professor Doré's article, a defendant's counterclaim must be made in good faith and if so, removal from the track is appropriate. Doré at 431. Professor Doré explained the expedited track is not for seeking nonmonetary relief, regardless of the potential value of the claim. This supports Cincinnati's position and its interpretation of the Rules. There had been no allegation Cincinnati's counterclaim was not brought in good faith: 33 Carpenters simply beat Cincinnati to the courthouse and filed its money-damages action first. The fact the two claims have similar elements does not mean the expedited action track is appropriate for non-monetary relief. The district court erred in finding so.

Should this Court determine the district court erred in granting Cincinnati's motion for summary judgment, it should find the district court erred in not removing this action from the expedited civil action track provided in Iowa Rule of Civil Procedure 1.281 and remand to the district court for proceedings without the application of Rule 1.281.

CONCLUSION

As explained in Cincinnati's initial brief, the district court correctly held 33 Carpenters engaged in public adjusting conduct from the onset of its relationship with Greg Whigham. The district court did not commit an error of law when it determined the purported assignment of Whigham's insurances claim to 33

Carpenters is invalid because it violates Iowa's licensure requirement for public adjusters. It should be affirmed in its entirety.

Alternatively, and relative to this cross-appeal, if this matter should be reversed and remanded to the district court, it should be remanded with instructions that it must be removed from the application of Iowa Rule of Civil Procedure 1.281 due to Cincinnati's compulsory counterclaim for non-money damages.

REQUEST FOR ORAL ARGUMENT

Cincinnati renews its request for the opportunity to present oral argument on the issues raised by this appeal and cross-appeal.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

[x] this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 point and contains 968 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Catherine M. Lucas

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies a copy of Defendant/Counterclaim Plaintiff/Appellee/Counter-Appellant's Final Reply Brief was filed with the Clerk

of the Iowa Supreme Court via EDMS and served upon the following persons by EDMS on the 5th day of April, 2018.

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ATTORNEY'S COST CERTIFICATE

I hereby certify that the cost of printing the foregoing Final Reply Brief was the sum of \$ N/A (EDMS).

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